

Legal Workforce Act (H.R. 3711)

SUMMARY OF ITS MAIN PROVISIONS

SEPTEMBER 2017

The Legal Workforce Act (H.R. 3711) was introduced in the U.S. House of Representatives by Rep. Lamar Smith (R-TX) on September 8, 2017.¹ The bill would require every employer in the U.S. to use an electronic employment eligibility verification system, or “EEVS.”² Below is a summary of the bill’s key provisions.

- **Conditional job offers.** Unlike current law, which requires employers who use E-Verify, the federal government’s current EEVS, to verify a worker’s employment eligibility *after* the worker is hired, the Legal Workforce Act would allow employers to condition a job offer on a worker’s final verification by the EEVS.
- **Phased-in over two years.** The Legal Workforce Act would phase in mandatory employer participation in the EEVS, based on the size of the employer, over a two-year period for all employers except for those who employ agricultural workers. Entities that recruit and refer workers would have to be using the system 12 months after enactment.
- **Rules for agriculture.** Employers that employ agricultural workers would have to be using the EEVS no later than 36 months after enactment.
- **Mandatory reverification of current workers’ employment eligibility using the EEVS.** Within 6 months of the bill’s enactment, the following members of the current workforce would have to have their employment eligibility reverified through the EEVS: employees who require a federal security clearance; workers assigned to a federal contract; and federal, state, and local government employees. The requirement would not apply to workers whose employment eligibility had previously been verified through E-Verify. Employers would also have to use the EEVS, according to the phase-in timeline for employers based on their size, for workers with expiring work authorization. Employers would also have to reverify a worker using the EEVS if the Social Security Administration notified the employer that the worker may not be employment-authorized because the worker may be using another person’s Social Security number.

¹ H.R. 3711, as introduced, is available at <https://judiciary.house.gov/wp-content/uploads/2017/09/LWA-Bill-Text.pdf>

² The EEVS in the Legal Workforce Act is explicitly “patterned on” the federal government’s current Web-based electronic employment eligibility verification system, E-Verify (see p. 34 of the bill as introduced). For more information about E-Verify, see *Facts About E-Verify* (National Immigration Law Center, Feb. 2011), <https://www.nilc.org/wp-content/uploads/2015/12/e-verify-facts-about-2011-02-15.pdf> and *Mandatory E-Verify: Too Costly for Employers, Workers, and Taxpayers* (National Immigration Law Center, June 2015) <https://www.nilc.org/wp-content/uploads/2015/11/E-Verify-issue-brief-2015-06-26.pdf>.

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- **Verification using the E-Verify photo-matching tool.**³ Employers who use the E-Verify system's photo-matching tool would have to match the worker's photo-tool photograph to both the photograph on the worker's work document and the worker's face.
- **Voluntary reverification of current employees using the EEVS.** Beginning 30 days after the bill is enacted, an employer would be allowed to voluntarily use the EEVS to reverify the employment eligibility of *any* current employee, as long as the employer reverified all individuals at the same geographic location or employed within the same job category. An employer's voluntary decision to reverify its current workforce would be shielded from consideration by any governmental agency in any proceeding under the Legal Workforce Act.
- **Limits documents that may prove employment eligibility and identity.** The bill would make unacceptable for proving employment eligibility and identity many documents that are currently acceptable.
- **Verification requirements for union hiring halls and nonprofit employment agencies.** Union halls and others who facilitate the hiring of laborers, including nonprofits and others that do not charge a fee, would be required to use the EEVS.
- **Employer safe harbor.** Employers would be relieved of liability (to the worker and to governmental entities) for any employment action taken with respect to a worker if the employer had verified the worker's identity and employment eligibility and relied on information provided by the EEVS in good faith, unless the secretary of Homeland Security could show by clear and convincing evidence that the employer had knowledge that the worker was unauthorized and still hired the worker.
- **Employer penalties.** The bill would substantially increase penalties for employers who knowingly hired or employed unauthorized workers and who failed to use the EEVS or knowingly submitted false information to the EEVS, but fines for knowingly hiring or employing an unauthorized worker could be waived if the employer established that it acted in good faith.
- **Limited remedies for workers.** If a worker were fired due to an error in the EEVS, the worker could seek compensation and injunctive relief to correct the error through the Federal Tort Claims Act; class action lawsuits, however, would be prohibited. The bill does not include an administrative or judicial appeal process for citizen and work-authorized immigrant workers who lose their employment because of an EEVS error.
- **Preemption.** The bill would preempt states and localities from passing employer sanctions and employment eligibility verification laws, but it would allow states to use business licensing and similar laws to penalize employers for not using the EEVS. It would allow a state, at its own cost, to enforce the provisions of the Legal Workforce Act as long as it followed the federal regulations, rules, and guidance implementing the act. An employer could not be subject to both federal and state enforcement, including investigation and audit, for the same violation. If a state initiated an enforcement action under the act before the federal government did, the state would have the right of first refusal to proceed. The state could then collect any fines assessed under the act.

FOR MORE INFORMATION, CONTACT

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³ Information about E-Verify photo-matching is available at www.uscis.gov/e-verify/employers/photo-matching.